GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Higher Education - Regularization of services of Sri K. Srinivasulu, Un-aided Lecturer in Economics, Sri S. Raja Sekhar Reddy, Un-aided Lecturer in Chemistry and Sri B.Srinivasulu, Un-aided Lecturer in Commerce of N.B.K.R. Science & Arts College, Vidyanagar, SPSR Nellore Dist in compliance with the orders dated:20.12.2018 of Hon'ble High Court of A.P in W.P.No.24252 of 2013 – Orders - Issued.

HIGHER EDUCATION [C.E.A2] DEPARTMENT

G.O.Ms.No.65 **Dated: 08.11.2021**

Read the following:-

1.Orders dated.20.12.2018 of Hon'ble High Court of A.P in W.P.No 24252 of 2013.
2.Contempt Case No. 449 of 2021 filed in W.P.No.24252 of 2013 before Hon'ble High Court of A.P. Amaravati.
3. CCE's Letter Rc.No.591/Admn.III-A/2006, dated: 27.07.2021 addressed to the Advocate on Record, Hon'ble Supreme Court of India, New Delhi.
4. e-file received from the CCE, AP, Comp.No.1467240.

ORDER:

The Commissioner of Collegiate Education, A.P., has informed that the Management of N.B.K.R. Science & Arts College, Vidyanagar, Kota Mandal, Nellore District was permitted to fill up certain Un-aided posts of Lecturers vide CCE's Procs.Rc.No.1191/ Admn. VI-1/2000, dated:01.08.2000 with due procedure. Economics, Chemistry & Commerce are one among the subjects permitted. The Management of the College notified the vacancies in local news papers. The Selection Committee in its meeting held on 10.10.2000 selected Sri K. Srinivasulu, Sri S. Raja Sekhar Reddy & Sri B. Srinivasulu as Un-aided Lecturers in Economics, Chemistry & Commerce respectively. Accordingly, they reported to duty on 18.10.2000. Further, (i) Sri K. Srinivasulu is having Educational qualifications of M.A. Economics, M.Phil. & Ph.D., at the time of his initial appointment, (ii) Sri S.Raja Sekhar Reddy is having M.Sc. Chemistry at the time of his initial appointment. Subsequently, he acquired Ph.D, (iii) Sri B. Srinivasulu is having M.Com. Degree. As such, they were appointed as Un-aided Lecturers against un-aided posts without all India vide paper notification there by violating the selection procedure as prescribed by the Government in G.O.Ms.No.208, Education, dated: 29.06.1999.

2. Sri K. Srinivasulu, Un-aided Lecturer in Economics, Sri S.Raja Sekhar Reddy, Un-aided Lecturer in Chemistry and Sri B. Srinivasulu, Un-aided Lecturer in Commerce of N.B.K.R. Science & Arts College, Vidyanagar filed W.P.No.24252 of 2013 before the Hon'ble High Court declaring the action of the impugned Proceeding of the 1st Respondent (Government) vide Memo.No.10017/CE.I-1/2005-4, dated: 29.06.2013 rejecting the request for absorption into existing aided vacancies and direct the Respondents to absorb the Petitioners in the aided vacancies of Lecturers in Economics,

Chemistry and Commerce respectively in the 4 th Respondent College with all consequential benefits on par with the similarly situated persons, dehors the ban imposed in G.O.Ms.No.35, Education, dated: 27.03.2006.

3. Finally, the Hon'ble High Court of Andhra Pradesh, in W.P.No. 24252 of 2013, passed orders on 20.12.2018 as follows:

> --- therefore, all these Writ Petitions are allowed. The orders rejecting absorption in aided posts passed by the Commissioner and Director of Collegiate Education, Andhra Pradesh in the case of the petitioner are set aside; and the State of Andhra Pradesh and the Commissioner of Collegiate Education are directed to absorb the petitioners in the aided posts of Lecturers in the respective private Managements with all consequential benefits.

4. Later, the petitioner filed a contempt case No.449 of 2021 for non compliance of the orders dated: 20.12.2018 of Hon'ble High Court of A.P, in W.P.No.24252 of 2013.

5. Aggrieved by the order dated:20.12.2018 of the Hon'ble High Court of Andhra Pradesh in W.P.No.24252 of 2013, the Department has filed Writ Appeal No.227 of 2021 before the Hon'ble High Court on the following grounds:

i) That the Petitioners were appointed by the Respondent College as Un-aided Lecturers against Un-aided posts in the un-aided courses without prior permission and without following selection procedure and subject to condition that the post will not be admitted to Grant-in-aid and the entire expenditure shall be met from the Management funds only.

ii) After promulgation of Act 2 of 1994 of Government Andhra Pradesh absorption of the persons working against un- aided posts, into aided posts is not permissible.

iii) Government vide G.O.Ms.No.35, Education Department, dated: 27.03.2006 has taken the decision imposing ban on recruitment of Lecturers in aided colleges in the State of Andhra Pradesh, keeping in view of drastic fall in admissions in aided colleges which resulted in inadequate workload and compelled to redeploy several Surplus Aided Lecturers to needy Government Degree Colleges. Therefore, any absorption of Lecturers in the aided posts is violative of G.O.Ms.No.35, Education, dated: 27.03.2006 as the same is amount to recruitment.

iv) Initially, the Private Managements are/were permitted to start colleges under specific condition that they will never be sanctioned Grant-in-aid. It itself adequately speak that the Managements of Private Educational Institutions do not have any right to claim for Grant-in-aid from Government and therefore, the candidates employed by the Managements of colleges also do not have any right for Grant in aid and cannot compel the Government for Grant-in-aid because Grant-in-aid to the Private Educational Institutions is not statutory under section 46 of A.P. Education Act, 1982.

v) That the Petitioners in W.P.No.24252 of 2013 were appointed after 01.03.1985 as Un-aided Lecturers against un-aided posts in Un-aided Sections cannot be considered for Grant-in-aid in view of Section 3(b) of Act 22 of 1988.

vi) Additional Grounds have already been filed in said Writ Appeal focusing the orders in G.O.Ms.No.208, Education, Dt.29-06-1999 and relevant Hon'ble Apex Court citations as per which the appointments of the respondents in the appeal are illegal and irregular and cannot be regularized.

vii) That the Petitioners in Writ Petition were appointed by the Management without any all India Paper notification, without following the selection procedure prescribed and Selection Committees constituted in terms of G.O.Ms.No.208, Education, dated: 29.06.1999.

viii) That the Petitioners in Writ Petition were not eligible for regularization even under G.O.Ms.No.328, Education, dated: 15.10.1997 read with G.O.Ms.No.283, dated: 03.11.1999 as they were appointed after the cutoff date of 25.11.1993.

ix) As per the Judgment of Hon'ble Apex Court in Uma Devi's Judgment, all the Petitioners have not put in 10 years of continuous services as on 10.04.2006 as they were appointed by the Management on 18.10.2000 as Un-aided Lecturers, hence, their claim is not in accordance with law laid down by the Apex Court and they cannot be regularised/admitted to Grant-in-aid

6. However, the Division Bench of the Hon'ble High Court on 30.06.2021 dismissed the Writ Appeal No.227 of 2021 on the lines of another Writ Appeal which was dismissed on 31.07.2020 in W.A.No.263 of 2019 and batch as the present Appeal is similar to that of the cases.

7. Aggrieved by the impugned final judgment and the orders dated:20.12.2018 of Hon'ble High Court of A.P, in W.P.No.24252 of 2013 passed by Hon'ble High Court of T.S & A.P the Department filed Special Leave Petition (C) No.14693 of 2021 before the Hon'ble Supreme Court of India with a prayer to set aside the said order on the following grounds.

(i) In the present case the Petitioners in W.P.No.24252 of 2013 were appointed by the Management as Un-Aided Lecturer in Un-aided posts without all India vide paper notification there by violating the selection procedure as prescribed by the Government in G.O.Ms.No.208 Education, dated: 29.06.1999 and the 2nd & 3 rd Petitioners without having requisite minimum qualification at the time of their initial appointment.

(ii) According to Section 3 read with Section 7 of Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff pattern and Pay structure) Act, 1994 no person who is a daily wage employee and no person who is appointed on a temporary basis and is continuing as such at the commencement of the Act shall have or shall be deemed ever to have a right to claim for regularization of services on any ground and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reasons. Hence, after promulgation of Act 2 of 1994, absorption of the persons working against un-aided posts into aided posts is not permissible. Therefore, any absorption of Lecturers in the aided posts is violative of Act 2 of 1994.

(iii) Government permits the Private Managements to start Un-aided Colleges, Courses/Sections with a clear mention that such colleges, courses and sections will not be brought under Grant-in-aid. Therefore, the employees appointed in un-aided Colleges,

Courses and Sections cannot be claimed Grant-in-aid as a matter of right under Section 46 of AP Education Act, 1982.

(iv) As per the Apex Court Judgment dated: 10.04.2006 in 3595-2612 of 1999 in Umadevi Case and SLP No.15744/2006, dated: 03.08.2010 in State of Karnataka and others Vs. M.L.Kesari the very appointments of the Petitioners itself were illegal as they did not put up 10 years of service as on 10.04.2006. Also they never worked against aided posts.

(v) Section 46 of A.P. Education Act, 1982 clearly speaks that Grant-in-aid is not a Statutory. This was confirmed by the Hon'ble Supreme Court of India in a case of State of Assam Vs Ajit Kumar Sharma following the Judgment, the Division Bench of Hon'ble High Court of A.P. in W.P. No.8697 of 20015, dated: 07.11.2005, held that no Private Educational Institutions or its employee has legal right to compel financial assistance by the State. It is rightly observed by the Hon'b1e Courts the managements do not claim financial assistance/Grant in aid as a matter of right.

(vi) As per Rule 7(4) of A.P. Educational Institutions (Establishment, Recognition, Administration and control of Institutions of Higher Education) Rules, 1987 issued vide G.O.Ms.No.29, Education, dated: 05.02.1987 in respect of payment of salaries to un-aided staff is liable to pay by the Management.

(vii) Government vide G.O.Ms.No.35, Education Department, dated: 27.03.2006 has taken the decision imposing ban on recruitment of Lecturers in aided colleges in the State of Andhra Pradesh, keeping in view of drastic fall in admissions in aided colleges which resulted in inadequate workload and compelled to redeploy several Surplus Aided Lecturers to needy Government Degree Colleges.

(viii) Government vide G. O.Ms.No.328, Education, dated: 15.10.1997 issued orders formulating a scheme according to which the services of Part-time Lecturers with reference to the conditions mentioned therein and later was rescinded in G.O.Ms.No.283, Education, dated: 03.11.1999 as the said scheme was evaluated as one-time measure. After that no statutory provision is available to regularize/absorb the services of Un-aided/Part-time Lecturers. The Petitioner in W.P. were all appointed after cutoff date of 25.11.1993 i.e. on 18.10.2000, they are not even eligible for regularization as per the said G.O.

(ix) Further, in view of Apex Court Judgment in cases and as per the observations of the Hon'ble Supreme Court in the cases of Bihar Public Commission Vs Kamini & Others, the State of Odisha & Anupkumar Senapathi, Upen Chandra Gogoi v. State of Assam &Ors., AIR 1998 SC 1289; Mangal Prasad Tamoli (Dead) by L.Rs. v. Narvadeshwar Mishra(Dead) by L.Rs. &Ors. , AIR 2005 SC1964; and Ritesh Tiwari& Anr. v.State of U.P. &Ors., AIR 2010 SC 3823 and STATE OF ORISSA vs. MAMATA MOHANTY in CIVIL APPEAL NO. 1272 OF 2011, In case, a wrong benefit has been conferred upon someone advertently or otherwise, it may not claim relief at the behest of such orders passed before which are attracting negative equality situation, relief cannot be granted basing on precedents.

8. However, the Hon'ble Supreme Court of India, tagged the Special Leave Petition (C) No.14693 of 2021 with SLP (c) No.13643 of 2020 etc.

9. Contempt proceedings are in force against Special Chief Secretary to Government, Higher Education Department and Special Commissioner of Collegiate Education, Andhra Pradesh, Vijayawada before the Hon'ble High Court Division Bench in contempt case No.449 of 2021 for non compliance of the orders dated: 20.12.2018 of Hon'ble High Court of A.P, in W.P.No.24252 of 2013. The Contempt Case No.449 of 2021 is posted on 10.11.2021 for compliance.

10. As the Writ Appeal No.227 of 2021 filed before Hon'ble High Court of A.P. was dismissed, Government after careful examination of the matter in consultation with advisory departments hereby accord permission to the Commissioner of Collegiate Education of Andhra Pradesh to implement the orders of the Hon'ble High Court of A.P, dated:20.12.2018 in W.P.No.24252 of 2013 for regularizing the services of Sri K. Srinivasulu, Un-aided Lecturer in Economics, Sri S. Raja Sekhar Reddy, Un-aided Lecturer in Chemistry and Sri B. Srinivasulu, Un-aided Lecturer in Commerce of N.B.K.R. Science & Arts College, Vidyanagar, SPSR Nellore Dist. on condition that the said vacancy is clear, regular and continued from time to time till date and subject to outcome of the Special Leave Petition (C) No. 14693 of 2021 pending before the Hon'ble Supreme Court of India.

11. This order applies for the above mentioned candidates only and shall not be taken as a precedent either now or in the future.

12. The Commissioner of Collegiate Education, A.P, Vijayawada shall take further action accordingly.

13. This order issues with the concurrence of the Finance Department, vide their U.O. No.HROMISC /71/2021 (Computer No.1478422), dated: 08.11.2021.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

SATISH CHANDRA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
The Commissioner of Collegiate Education,
Andhra Pradesh, Vijayawada.
The individuals (through the CCE, A.P. Vijayawada.)

Copy to:

The Accountant General, A.P. Hyderabad/ Vijayawada.
The Director of Treasuries and Accounts, A.P, Vijayawada.
The Pay and Accounts Officer, A.P, Vijayawada.
The P.S to Secretary to Chief Minister.
The Addl.P.S to Minister [Education].
The P.S to Chief Secretary.
The P.S to Spl.C.S to Higher Education Department.
The G.P for Higher Education, High Court of A.P. Amaravati.
Finance (FMU-THE) Department.
Law Department.
Sf/Sc.

// FORWARDED :: BY ORDER//

SECTION OFFICER